

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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PRINCE ATUM-RA UHURU MUTAWAKKIL  
also known as NORMAN C. GREEN,

Plaintiff,

v.

JOAN GERL, ROBERT PATTEN,  
THOMAS TAYLOR, LEONARD JOHNSON,  
JEREMY McDANIEL, JAMES BOISEN,  
PETER HUIBREGTSE and KELLY TRUMM,

Defendants.  
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ORDER

12-cv-816-bbc

Pro se plaintiff Prince Atum-Ra Uhuru Mutawakkil, also known as Norman Green,  
is proceeding on the following claims about his treatment by various prison officials:

(a) in November 2007 defendants Joan Gerl, Thomas Taylor, Jeremy McDaniel and Leonard Johnson used excessive force against plaintiff, in violation of the Eighth Amendment;

(b) on the same day, defendants Robert Patten, Gerl, Taylor, Johnson and McDaniel subjected plaintiff to a strip search, in violation of the Eighth Amendment;

(c) defendant Gerl refused to take plaintiff to the nurse after the use of force, in violation of the Eighth Amendment;

(d) defendants Peter Huibregtse and Kelly Trumm violated plaintiff's First Amendment rights by authorizing the censorship of plaintiff's mail and denying plaintiff's grievance about the issue.

Now before the court are two motions by plaintiff to "supplement" and "clarify" his

complaint to expand the scope of some of his claims. Dkt. ##71 and 72. I am granting these motions in part and denying them in part.

First, plaintiff says that he wants to add “Monica Horner” and “Lt. Primmer” as defendants on the excessive force and strip search claims under Fed. R. Civ. P. 15. I am denying this aspect of the motion as untimely, unfairly prejudicial and futile. Park v. City of Chicago, 297 F.3d 606, 612 (7th Cir. 2002) (district court may deny plaintiff leave to amend if there is undue delay, undue prejudice to opposing party or if amendment would be futile). Plaintiff filed this case more than a year ago and discovery began more than seven months ago, but he does not explain why he waited until now to seek to add more defendants. Allowing plaintiff to add new defendants at such a late date would require substantial revisions to the schedule to allow Horner and Primmer time to accept service, answer the complaint and conduct their own discovery.

In any event, plaintiff has not shown that he has a viable claim against Horner or Primmer. King ex rel. King v. East St. Louis School District 189, 496 F.3d 812, 819 (7th Cir. 2007) (“It is not an abuse of discretion to deny a motion to amend a complaint when such amendment would be futile. An amendment is futile if the amended complaint would not survive a motion for summary judgment.”) (internal citation omitted). Plaintiff does not allege that either of those defendants was present during the use of force; instead, he says that they may be held liable on the ground that they “authorized carte blanche use of force” on plaintiff. However, the incident report plaintiff cites to support that allegation states only that defendant Gerl “discussed [the] situation with Lt. Primmer and Capt. Horner” and

Gerl “determined that it would be appropriate to use force, if necessary, to overcome Inmate Green’s passive resistive behavior and enforce the institution rules of inmates kneeling to be placed into leg restraints when being moved.” Dkt. #71-2 at 1. It is not plausible to infer from that document that Primmer or Horner acted “maliciously and sadistically for the very purpose of causing harm” to plaintiff, which is what he would have to show to prevail on an excessive force claim. Whitley v. Albers, 475 U.S. 312, 320 (1986).

Next, plaintiff says that he wants to “clarify” his claims related to the use of force and the strip search in two ways. First, he says that, when he used the words “medical malpractice and indifference and torture” in his complaint, he meant to refer to Title II of the Americans with Disabilities Act. However, that argument is frivolous because there is no relationship between the ADA and the terms used in the complaint. Plaintiff did not allege in his complaint that he was disabled, that defendants discriminated against him because of a disability or that they failed to provide a reasonable accommodation. Even now, plaintiff does not identify a “service, program, or activity” from which he was excluded, which is a requirement for a claim brought under Title II. 42 U.S.C. § 12132.

Finally, plaintiff says that, when he used the terms “tort, negligence and pain and suffering” in his complaint, he meant to include claims for assault, battery and intentional infliction of emotional distress. This argument is more plausible, but only slightly. Still, I see no reason to deny plaintiff’s request to proceed on these other claims. There should be little prejudice to defendants because the facts underlying the state law claims are the same as the federal claims and the legal standards are similar. Accordingly, I will allow plaintiff

to proceed on claims for assault, battery and intentional infliction of emotional distress. Because plaintiff is not alleging new facts, it is not necessary for him to file an amended complaint or for defendants to file a new answer. I will adjust the deadline for filing dispositive motions to accommodate the new claims.

In the meantime, plaintiff will have to show that he complied with the notice of claim statute, Wis. Stat. 893.82(3m), which is a jurisdictional requirement for a state law claim against a state employee. Ibrahim v. Samore, 118 Wis.2d 720, 726, 348 N.W.2d 554 (1984). In particular, plaintiff should file a copy of the notice that he filed, along with any response that he received. If plaintiff does not file a copy of his notice of claim, I will dismiss the state law claims. Even if plaintiff files a notice of claim, defendants are free to challenge the adequacy of the notice in a motion for summary judgment. Kellner v. Christian, 197 Wis. 2d 183, 194-195, 539 N.W.2d 685, 689 (1995) (Wisconsin law “requires that a claimant strictly comply with the statute in order to proceed with his or her claim.”).

## ORDER

IT IS ORDERED that

1. Plaintiff Prince Atum-Ra Uhuru Mutawakkil, also known as Norman Green, is GRANTED leave to proceed on his claims that defendants Robert Patten, Joan Gerl, Thomas Taylor, Jeremy McDaniel and Leonard Johnson committed the torts of assault, battery and intentional infliction of emotional distress during the alleged use of force and strip search that occurred in November 2007. Plaintiff’s motions to supplement and clarify his

complaint, dkt. ##71 and 72, are DENIED in all other respects.

2. Plaintiff may have until January 24, 2014, to file a copy of any notice of claim that he filed with the state and any response that he received related to the use of force and strip search that occurred in November 2007. If plaintiff does not respond by January 24, I will dismiss the state law claims.

3. The deadline for filing dispositive motions is AMENDED to March 3, 2014. All other deadlines remain the same.

Entered this 10th day of January, 2014

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge